



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: 8ENF-W

DEC 19 2005

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

#7003-2260-0001-7791-0782

#7003-2260-0001-7791-5497

Adam Pietraszek, Registered Agent
Pietraszek Enterprises, Inc.
5056 North Nevada Avenue
Colorado Springs, CO 80918

and

The Shafer Group, PC, Registered Agent
Munson Excavating, Inc.
15434 Gleneagle Drive, Suite 220
Colorado Springs, CO 80921

Re: Notice of Proposed Assessment of
Class II Civil Penalty
Docket No. CWA-08-2006-0005

Dear Mr. Pietraszek and the Shafer Group:

Enclosed is a document entitled Administrative Complaint ("Complaint"). The United States Environmental Protection Agency ("EPA") is issuing this Complaint against Pietraszek Enterprises, Inc. and Munson Excavating, Inc. (the "Respondents") pursuant to section 309 of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319. In the Complaint, EPA alleges that the Respondents violated section 301 of the Act, 33 U.S.C. § 1311, by failing to obtain appropriate authorization under the CWA for placement of dredged or fill material into Monument Creek, including its adjacent wetlands, on Lots 2, 3, and 4, Monument Creek Commerce Center Filing No. 4, and on adjacent properties owned by the City of Colorado Springs and Tudor Land Company, Inc., Colorado Springs, El Paso County, Colorado, in Section 7, Township 13 South, Range 66 West. The Complaint proposes that a penalty of \$157,500 be assessed for these violations.

The Respondents have the right to a hearing to contest the factual allegations in the Complaint. We have enclosed a copy of 40 C.F.R. part 22, which identifies the procedures EPA



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follows in Class II penalty assessments. Please note the requirements for an answer to the Complaint in 40 C.F.R. § 22.15(b).

If the Respondents wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, they must file an answer within thirty (30) days of receipt of the enclosed Complaint to the EPA Region 8 Hearing Clerk at the following address:

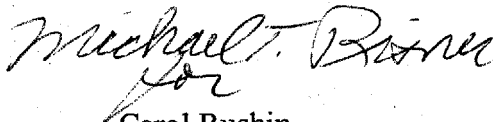
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

The Respondents may file separate answers, if they wish. If a Respondent does not file an answer by the applicable deadline [See 40 C.F.R. § 22.15(a)], it may be found in default. A default judgment may impose the full penalty proposed in the Complaint.

EPA encourages settlement of these proceedings at any time prior to a formal hearing if the settlement is consistent with the provisions and objectives of the Act and applicable regulations [See 40 C.F.R. § 22.18]. If a mutually satisfactory settlement can be reached, it will be formalized in a Consent Agreement. Upon final approval of the Consent Agreement by the Regional Judicial Officer, each settling Respondent will be bound by the terms of the Consent Agreement and will waive its right to a hearing on, and judicial appeal of, the agreed upon civil penalty. Either Respondent has the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA, but this is not required.

Please note that arranging for a settlement meeting does not relieve either Respondent of the need to file a timely answer to EPA's Complaint. If either Respondent wishes to discuss settlement of this matter, the most knowledgeable person on my staff for legal issues is Peggy Livingston, Senior Enforcement Attorney, who can be reached at 303-312-6858. The most knowledgeable person on my staff for technical issues is Kenneth Champagne, Section 404 Enforcement Officer, who can be reached at 303-312-6608. We urge your prompt attention to this matter.

Sincerely,



Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures:

1. Administrative Complaint
2. Administrative Penalty Procedures (40 C.F.R. part 22)
3. Certificate of Service

cc: Tina Artemis, EPA - Regional Hearing Clerk
Van Truan - U.S. Army Corps of Engineers - Pueblo, CO
Pete Plage - U.S. Fish and Wildlife Service - Denver, CO
Steven K. Mulliken - Mulliken, Gleason, Weiner, Whitney & Jolivet, P.C.
Connie H. King - Merrill, Anderson, King & Harris, LLC



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
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DEC 19 2005

Ref: 8ENF-W

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
#7005-0390-0000-4846-6176

Steve Gunderson, Director
Colorado Department of Public Health
and Environmental
Water Quality Control Division
4300 Cherry Creek Drive South
Denver, CO 80246-1530

Re: Notice of Proposed Assessment of
Class II Civil Penalty
Docket No. CWA-08-2006-0005

Dear Mr. Gunderson:

Enclosed is a copy of an administrative complaint, which proposes to assess a civil penalty against Pietraszek Enterprises, Inc. and Munson, Excavating, Inc. ("Respondents") of Colorado Springs, Colorado. The United States Environmental Protection Agency ("EPA") filed the complaint pursuant to section 309(g), 33 U.S.C. § 1319(g), of the Clean Water Act ("CWA") to begin the process to assess administratively a Class II civil penalty of \$157,500 jointly and severally against the Respondents for violations of the CWA. Because the violations occurred in Colorado, EPA is providing notice to you pursuant to CWA section 309(a), 33 U.S.C. § 1319(a). The section 404 program is not a CWA authorized program in Colorado; however, we are willing to provide further information on this proposed assessment.

You or your staff may request a conference within thirty (30) days of receiving this letter. The conference may be in person or by telephone and may cover any matters relevant to the proposed assessment.

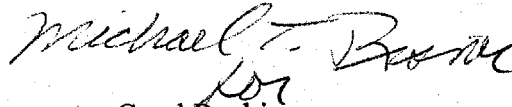
A copy of EPA procedures governing the administrative assessment of civil penalties under the CWA is enclosed for your reference. If you have any questions, the most



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knowledgeable person on my staff for legal issues is Peggy Livingston, Senior Enforcement Attorney, who can be reached at 303-312-6858. The most knowledgeable person on my staff for technical issues is Kenneth Champagne, Section 404 Enforcement Officer, who can be reached at 303-312-6608.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael T. Brown".

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures:

1. Administrative Complaint
2. Certificate of Service
3. Administrative Penalty Procedures (40 C.F.R. part 22)

cc: Tina Artemis, EPA, Regional Hearing Clerk

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2005 DEC 19 AM 8:21

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)	ADMINISTRATIVE COMPLAINT
)	
Pietraszek Enterprises, Inc.,)	
and)	
Munson Excavating, Inc.)	
)	Docket No. CWA-08-2006-0005
Colorado Springs, Colorado)	
)	
Respondents.)	
<hr/>)	

I. STATUTORY AUTHORITY

1. This Administrative Complaint ("Complaint") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by section 309(g)(1)(A) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(1)(A), and properly delegated to the undersigned EPA official ("Complainant").
2. Pursuant to section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," 40 C.F.R. part 22, Complainant hereby proposes the assessment of a civil penalty against Pietraszek Enterprises, Inc. and Munson Excavating, Inc. ("Respondents") for their violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

II. ALLEGATIONS

1. Respondent Pietraszek Enterprises, Inc. ("Pietraszek") is a Colorado corporation having an office address of 5056 North Nevada Avenue, Colorado Springs, Colorado 80918. Pietraszek was incorporated on October 30, 1990. Its president and registered agent is Adam Pietraszek, and its vice president is Slawomir (a/k/a Slawek) Pietraszek.
2. Respondent Munson Excavating, Inc. ("Munson") is a Colorado corporation having an office address of 7080 Shoup Road, Colorado Springs, Colorado 80908. Its registered agent is the Shafer Group, PC, having an address of 15435 Gleneagle Drive, Suite 220, Colorado Springs, Colorado 80921. Munson was incorporated on January 1, 1998. Its president is Lisa Munson, and its vice president is John P. Munson.
3. Each Respondent is a "person" as defined by section 502(5) of the CWA, 33 U.S.C. § 1362(5).
4. At all relevant times, Pietraszek has owned, controlled and/or operated the property containing the Monument Creek and its adjacent wetlands located on Lots 2, 3, and 4 of Monument Creek Commerce Center Filing No. 4, Colorado Springs, El Paso County, Colorado, in Section 7, Township 13 South, Range 66 West ("the Property"). The Property is the location of a Staybridge Suites Hotel at 7130 Commerce Center Drive, Colorado Springs, Colorado, 80919.
5. Monument Creek and its adjacent wetlands are tributary to Fountain Creek, which is tributary to the Arkansas River. The Arkansas River is, and was at all relevant times, a navigable, interstate water.
6. Pietraszek purchased the Property in December of 1998.

7. At the time that Pietraszek acquired the Property, a previous owner had received authorization from the U.S. Army Corps of Engineers ("Corps") to conduct a bank stabilization project at the Property under Nationwide Permit 13. That permit expired in February of 1999 without the bank stabilization project having been undertaken.
8. At the time that Pietraszek acquired the Property, a previous owner had received Individual Permit No. CO-97-30036 from the Corps to allow construction of a riffle drop structure in Monument Creek as part of the bank stabilization project. That permit expired on December 31, 2000, without either the bank stabilization or the riffle drop structure having been built.
9. On or about February 28, 2000, Pietraszek received authorization from the Corps to conduct a bank stabilization project without a riffle drop structure under Nationwide Permit 13. The authorization required, *inter alia*, that the project be constructed from within the channel of Monument Creek. That authorization expired on February 28, 2002, without completion of the bank stabilization project.
10. On or about March 6, 2001, the Corps met with Pietraszek's agents (Len Beasley of Leigh Whitehead & Associates, and Steve La Fargo) at the Property to discuss Pietraszek's proposal to construct a large cofferdam as well as a bank stabilization project and riffle drop structure. Hotel construction was already underway. Pietraszek's agents stated that a permit existed for the bank stabilization project, but they could not produce the permit. During the meeting, the Corps informed Pietraszek's agents that Pietraszek would need to obtain a permit from the Corps for the riffle drop structure and for the cofferdam before beginning construction. The Corps also informed Pietraszek's agents that the area

appeared to be habitat of the Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*), a species listed as threatened under the Endangered Species Act, 16 U.S.C. § 1531, *et seq.*, and that at least some of the Property appeared to be wetlands.

11. Between November 6, 2001 and April 5, 2002, Munson constructed the riprap bank stabilization, riffle drop structure, cofferdam, diversion ditch, and temporary road crossings in Monument Creek and its adjacent wetland.
12. On or about April 3, 2002, the Corps' Southern Colorado Regulatory Office received a report that construction work, including a riffle drop structure, temporary fills, and work within endangered species habitat was ongoing in and around Monument Creek on the Property and on neighboring property owned by the City of Colorado Springs and the Tudor Land Company, Inc. (collectively, "the Disturbed Site").
13. On or about April 4, 2002, the Corps conducted an initial site inspection and, from the west bank of Monument Creek, observed ongoing work in Monument Creek and on adjacent wetland areas at the Disturbed Site using heavy equipment such as bulldozers and backhoes. A cofferdam, a diversion ditch, a riprap bank stabilization project, two temporary road crossings, and a riffle drop structure were being built, and dredge and/or fill material had been sidecast into adjacent wetlands. There was no evidence of any controls for erosion or sedimentation. The Corps determined that most or all of the work had not been authorized by any Corps permit and was occurring in habitat of the Preble's Meadow Jumping Mouse.
14. On or about April 5, 2002, the Corps contacted Slawek Pietraszek by telephone and confirmed that Pietraszek Enterprises, Inc. owned the Property. The Corps notified Mr.

Pietraszek that the work at the Disturbed Site had exceeded the limits of the Nationwide Permit 13 for bank stabilization and was in violation of the CWA and, due to no consultation with the U.S. Fish & Wildlife Service, also appeared to have been done in violation of the Endangered Species Act. The Corps asked for permission to conduct an on-site meeting, to which Mr. Pietraszek agreed.

15. On or about April 8, 2002, the Corps and the U.S. Fish & Wildlife Service met with Slawek Pietraszek at the Disturbed Site. The Corps confirmed that Pietraszek had arranged for the work described in paragraphs 11, 12, and 13, above, to be done and that this work had been conducted without the required authorization by a CWA § 404 permit from the Corps. The Corps explained that the Nationwide Permit for the bank stabilization did not authorize the work the Corps had observed. The Corps informed Mr. Pietraszek that as a result of the inspection findings, the Corps would issue a cease-and-desist order to the land owner (Respondent Pietraszek Enterprises, Inc.) and to the contractor performing the work. Mr. Pietraszek named Munson as Pietraszek's contractor.
16. On or about April 8, 2002, the Corps contacted John Munson, who confirmed that Munson was the contractor at the Disturbed Site. The Corps notified Mr. Munson that the project was in violation of the CWA. The Corps informed Mr. Munson that the Corps would be issuing a cease-and-desist order to Munson, and Mr. Munson agreed that he would stop work.
17. By letter dated April 9, 2002, the Corps notified the Respondents in writing that Respondents' work at the Disturbed Site, as described in paragraphs 11, 12, and 13,

above, required prior Corps authorization and that the required authorization had not been granted. The Corps directed Respondents to “cease and desist” any further unauthorized work at the Disturbed Site and informed the Respondents that the Corps was referring the matter to the U.S. Environmental Protection Agency.

18. On or about April 12, 2002, the Corps conducted a follow-up inspection of the Disturbed Site to further investigate the unauthorized discharge of dredged or fill material into waters of the United States.
19. On April 17, 2002, the City of Colorado Springs issued Pietraszek a Warning Letter for Non-Compliance, stating that “no [Best Management Practices] have been installed anywhere throughout the site to provide erosion and sediment control” and that “large amounts of fill material have been placed into portions of Monument Creek, which is not indicated on the grading and erosion control plans on file with City Engineering.”
20. On or about April 25, 2002, Adam Pietraszek arranged a meeting at the Disturbed Site with various involved parties. At that meeting, Pietraszek’s architect, Ted Locke, informed the Corps that the information necessary for an application for a Section 404 permit to authorize the riffle drop structure had been prepared but had never been submitted to the Corps.
21. Pursuant to section 309 of the CWA, 33 U.S.C. § 1319, EPA issued a Findings of Violation and Order for Compliance, Docket No. CWA-08-2002-43 (“Compliance Order”) to Adam Pietraszek, Slawomir Pietraszek, and Respondent Pietraszek Enterprises, Inc. on September 30, 2002, citing the unauthorized discharge of dredged or fill material into waters of the United States, in violation of section 301(a) of the CWA,

33 U.S.C. § 1311(a). The Order required Adam Pietraszek, Slawomir Pietraszek, and Respondent Pietraszek Enterprises, Inc. to prepare and implement a Restoration Plan to remove the dredged and fill material placed into the Monument Creek and its adjacent wetlands and to restore Monument Creek and its adjacent wetlands to their pre-impact condition and grade.

22. Pursuant to EPA's Compliance Order, Adam Pietraszek, Slawomir Pietraszek, and Respondent Pietraszek Enterprises, Inc. submitted a Wetland and Preble's Meadow Jumping Mouse Habitat Mitigation and Monitoring Plan, which proposed restoration and mitigation for the impacted creek, wetlands, and Preble's Meadow Jumping Mouse habitat. On November 17, 2004, EPA granted conditional approval of the plan. However, Adam Pietraszek, Slawomir Pietraszek, and Respondent Pietraszek Enterprises, Inc. have yet to implement the plan.
23. The activities described in paragraphs 11, 12, and 13 of Section II of this Complaint were performed using common earthmoving vehicles and equipment, including, but not limited to, bulldozer(s) and backhoe(s) operated by one or more individuals on behalf of one or both Respondents.
24. The discharged dredged material referenced above is, and was at all relevant times, "dredged material" as defined in 33 C.F.R. § 323.2(c) and (d) and "pollutants" as defined in section 502(6) of the CWA, 33 U.S.C. § 1362(6).
25. The discharged fill material referenced above is and was at all relevant times "fill material" as defined in 33 C.F.R. § 323.2(e) and (f) and "pollutants" as defined in section 502(6) of the CWA, 33 U.S.C. § 1362(6).

26. Monument Creek and its adjacent wetlands that Respondents' unauthorized activities filled and disturbed provided various functions and values, including: wildlife habitat for birds, mammals, reptiles and amphibians; water quality enhancement; flood attenuation; and/or aesthetics.
27. Some, if not all, of the creek and wetland areas where dredged and/or fill material was discharged by Respondents and/or their agents is habitat of the Preble's Meadow Jumping Mouse (*Zapus hudsonius preblei*), a species listed as threatened under the Endangered Species Act, 16 U.S.C. § 1531 *et seq.*
28. The vehicles and equipment described in paragraphs 13 and 23 of Section II of this Complaint are and were at all relevant times each a "point source" within the meaning of section 502(14) of the CWA, 33 U.S.C. § 1362(14).
29. Monument Creek and its adjacent wetlands referenced in paragraphs 4 and 5 of Section II of this Complaint are and were at all relevant times "waters of the United States" as defined in 33 C.F.R. § 328.3(a) and therefore "navigable waters" within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7).
30. The placement of dredged and/or fill material into Monument Creek and its adjacent wetlands constitutes the "discharge of pollutants" as defined in section 502(12) of the CWA, 33 U.S.C. § 1362(12).
31. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits, among other things, the discharge of pollutants by any person into waters of the United States except as in compliance with section 404 of the CWA, 33 U.S.C. § 1344.

32. Section 404 of the CWA, 33 U.S.C. § 1344, sets forth a permitting system authorizing the Secretary of the Army, acting through the Chief of Engineers of the Corps, to issue permits for the discharge of dredged and/or fill material into waters of the United States.
33. 33 C.F.R. § 323.3(a) specifies that, unless exempted pursuant to 33 C.F.R. § 323.4, a permit issued by the Corps is required for the discharge of dredged and/or fill material into waters of the United States.
34. Except for the bank stabilization project described in paragraph 9 of Section III of this Complaint, neither Respondent has ever been authorized by a permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344, to conduct the activities described in paragraphs 11, 12, and 13 of Section II of this Complaint. Additionally, the impacts to Monument Creek and its adjacent wetlands exceeded and were therefore in violation of, the February 28, 2000 authorization granted to Pietraszek by the Corps pursuant to Nationwide Permit 13: Bank Stabilization. Moreover, the February 28, 2000 authorization granted by the Corps pursuant to Nationwide Permit 13: Bank Stabilization expired on February 28, 2002, and thus did not authorize any work performed after that date.
35. The activities conducted by Respondents and/or their agents as described in paragraphs 11, 12, and 13 of Section II of this Complaint violate section 301(a) of the CWA, 33 U.S.C. § 1311. Each discharge of pollutants from a point source by Respondents into waters of the United States without the required permit(s) issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344, constitutes a violation of section 301(a) of the CWA,

33 U.S.C. § 1311(a). Each day the discharges remain in place without the required permit(s) constitutes an additional day of violation of CWA section 301(a).

36. Pursuant to section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA will consult with the Colorado Department of Public Health and Environmental, Water Quality Control Division, regarding assessment of this administrative penalty by furnishing a copy of this Complaint and inviting comments on behalf of the State of Colorado.

III. PROPOSED ADMINISTRATIVE PENALTY

Based upon the foregoing allegations, and pursuant to its authority under section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), EPA Region 8 hereby proposes to assess an administrative penalty of \$157,500 against Respondents.

The proposed penalty amount was determined by EPA after taking into account all factors identified at section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3). These factors include the nature, circumstances, extent, and gravity of the violations, Respondents' prior compliance history, Respondents' degree of culpability for the cited violations, any economic benefit or savings accruing to Respondents by virtue of the violations, Respondents' ability to pay the proposed penalty, and other matters that justice may require.

IV. TERMS OF PAYMENT

If Respondents do not contest the findings and assessments set out above, payment of the penalty for the violation may be forwarded to EPA. If such payment is made within 30 calendar days of receipt of this Complaint, then no answer need be filed. Penalty payment must be made

by certified or cashier's check payable to "Treasurer, the United States of America," and remitted to:

Regional Hearing Clerk
P.O. Box 360859 M
Pittsburgh, PA 15251

A copy of the check shall be sent to:

Margaret J. ("Peggy") Livingston
Enforcement Attorney
U.S. EPA, Region 8 (8ENF-L)
999 18th Street, Suite 300
Denver, CO 80202-2466

A transmittal letter identifying the case title and docket number must accompany the remittance and copy of the check. The case title and docket number should also be indicated directly on the check.

Neither the assessment nor the payment of an administrative penalty pursuant to section 309(g) of the CWA shall affect Respondents' continuing obligation to comply with the CWA or any other Federal, state, or local law or regulation or any compliance order issued under the CWA.

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

As provided in section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. § 22.15(c), Respondents have the right to a hearing in this matter. If Respondents (1) contest any material fact upon which the Complaint is based, (2) contend that the amount of penalty proposed in the Complaint is inappropriate, and/or (3) contend that they are entitled to judgment as a matter of law, they must file a written answer in accordance with

40 C.F.R. § 22.15 within thirty (30) days after service of the Complaint. The Respondents may file a single answer, or each Respondent may file a separate answer.

Respondents' answer(s) must (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint, (2) state the circumstances or arguments that are alleged to constitute grounds for defense, (3) state the facts intended to be placed at issue, and (4) specifically request a hearing, if desired. 40 C.F.R. § 22.15(b). Failure to admit, deny, or explain any materially factual allegation contained in the Complaint constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). An original and one copy of each answer must be filed with:

Regional Hearing Clerk (8RC)
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

A copy of each answer and of each other document filed in this action must be sent to:

Margaret J. ("Peggy") Livingston
Enforcement Attorney
U.S. EPA, Region 8 (8ENF-L)
999 18th Street, Suite 300
Denver, CO 80202-2466

If Respondents request a hearing on the proposed penalty assessment, members of the public who have exercised their right to comment on this Complaint will have the right to present evidence on the propriety of the penalty assessment. EPA is obligated to give notice of the hearing to those who comment. Section 309(g)(4)(B) of the CWA and 40 C.F.R. § 22.45.

**IF RESPONDENTS FAIL TO REQUEST A HEARING,
THEY WILL WAIVE THEIR RIGHT TO CONTEST ANY
OF THE ALLEGATIONS SET FORTH IN THE
COMPLAINT.**

**IF RESPONDENTS FAIL TO FILE A WRITTEN ANSWER
WITHIN THE THIRTY (30) DAY TIME LIMIT, A
DEFAULT JUDGMENT ENTERED PURSUANT TO
40 C.F.R. § 22.17 MAY IMPOSE THE FULL PENALTY
PROPOSED IN THE COMPLAINT.**

Members of the public who comment on this Complaint during the thirty (30) day period will have an additional thirty (30) days to petition EPA to set aside any consent agreement that may be reached and to hold a public hearing thereon. A petition will be granted and a public hearing held to comment on the consent agreement only if the petitioner's evidence is material and was not considered by EPA in the issuance of the consent agreement. 40 C.F.R. § 22.45(c)(4).

VI. SETTLEMENT CONFERENCE

EPA encourages the exploration of settlement possibilities through an informal settlement conference. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation process. If a settlement can be reached, its terms must be expressed in a written consent agreement signed by the parties and incorporated into a final order by the Regional Judicial Officer. 40 C.F.R. § 22.18.

Please direct a request for a settlement conference, or any questions regarding this

Complaint, to:

Margaret J. ("Peggy") Livingston
Enforcement Attorney
U.S. EPA, Region 8 (8ENF-L)
999 18th Street, Suite 300
Denver, CO 80202-2466
303-312-6858

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8

Date:

12/16/05

Michael T. Bisner for

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice
Complainant

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I sent by certified mail, return receipt requested, a copy of the foregoing Administrative Complaint and a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, to the following persons at the addresses listed below:

Adam Pietraszek, Registered Agent
Pietraszek Enterprises, Inc.
5056 North Nevada Avenue
Colorado Springs, CO 80918

Certified Return Receipt No. 7003 226 0007 791 0782

The Shafer Group, PC, Registered Agent
Munson Excavating, Inc.
15434 Gleneagle Drive, Suite 220
Colorado Springs, CO 80921

Certified Return Receipt No. 7003 2260 0001 77915497

I further certify that, on the date noted below, I sent by certified mail, return receipt requested, a copy of this document to the following person at the address listed below:

Steve Gunderson, Director
Colorado Department of Public Health
and Environmental
Water Quality Control Division
4300 Cherry Creek Drive South
Denver, CO 80246-1530

Certified Return Receipt No. 7005 0390 0000 4846 6176

The original and one copy were filed by hand with:

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

Date: 12/19/05

Carrie Reed

Friday
July 23, 1999

82007 1
**Environmental
Protection Agency**

Part V

Environmental Protection Agency

40 CFR Part 22

**Consolidated Rules of Practice Governing
the Administrative Assessment of Civil
Penalties, Issuance of Compliance or
Corrective Action Orders, and the
Revocation, Termination or Suspension of
Permits; Final Rule**